RESPONSE UNDER 37 C.F.R. § 1.116
EXPEDITED PROCEDURE
GROUP ART UNIT 2173

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application. No: 09/886,239   §
Filed: June 20, 2001   §
Inventor(s):   §
    Jeffrey D. Washington, Michael San   §
    and Robert C. Young   §
        §
        §
        §
Title: Collector Node for a Graphical   §
      Program   §
        §
        §
        §
        §

Examiner: Vu, Kieu D
Group/Art Unit: 2173
Atty. Dkt. No: 5150-48900

REQUEST FOR PRE-APPEAL BRIEF REVIEW

ATTN: BOX AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

     Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request. This request is being filed with a Notice of Appeal. The review is requested for the reason(s) stated below.

     Applicant is in receipt of the Office Action mailed January 30, 2006. Claims 1-7, 9-15, and 17-24 remain pending in the case. Reconsideration of the present case is earnestly requested in light of the following remarks. Please note that for brevity, only the primary arguments directed to the independent claims are presented, and that additional arguments, e.g., directed to the subject matter of the dependent claims, will be presented if and when the case proceeds to Appeal.

     Claims 1-2, 5-6, 9-10, 13-14, and 17 were rejected under 35 U.S.C. 103(a) as being unpatentable over Roach et al., U.S. Patent No. 6,343,292 (hereinafter "Roach") in view of Guttag et al., U.S. Patent

1

No. 4,933,878 (hereinafter "Guttag"). Claims 7, 15, and 18-19 were rejected under 35 U.S.C. 103(a) as being unpatentable over Roach, Guttag, and Rogers et al., U.S. Patent No. 5,497,500 (hereinafter "Rogers"). Applicant respectfully traverses these rejections and submits that the cited references do not form a case of *prima facie* obviousness for several reasons.

Applicant first reminds the Panel that, "In order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." *In re Oetiker*, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). See also *In re Deminski*, 796 F.2d 436, 230 USPQ 313 (Fed. Cir. 1986); *In re Clay*, 966 F.2d 656, 659, 23 USPQ2d 1058, 1060-61 (Fed. Cir. 1992). However, the Guttag reference is not in the field of Applicant's endeavor and is not reasonably pertinent to the subject matter recited in the present claims.

The present claims relate to the field of graphical programming. As described in the Description of the Related Art section of the present application, a graphical program is created by placing a plurality of nodes or icons in a block diagram and interconnecting the nodes or icons, e.g., such that the plurality of interconnected nodes or icons visually indicates functionality of the graphical program. For example, claim 1 recites a method for creating a graphical program that performs a numerical function.

Guttag, on the other hand, teaches that, "The present invention relates to the field of computer graphics. In particular, this invention relates to the field of bit mapped computer graphics in which the computer memory stores data for each individual picture element or pixel of the display at memory locations that correspond to the location of that pixel on the display" (Col. 1, line 66 – Col. 2, line 3). The field of computer graphics is not at all the same as the field of graphical programming. Guttag nowhere teaches or even remotely suggests the concept of a graphical program. Thus, Applicant respectfully submits that Guttag cannot be used as a reference in a 103(a) rejection.

Furthermore, Applicant respectfully submits that the cited references do not teach the limitations recited in the present claims, as would be required to form a case of *prima facie* obviousness. For example, claim 1 recites in pertinent part, "configuring the node with criteria information in response to user input, wherein the criteria information indicates that the first numerical function is to be performed on a subset, but not all, of the data values received by the node". Roach and Guttag, taken either singly or in combination, do not teach this limitation of claim 1. The Examiner relies on Guttag to teach this limitation. However, as discussed above, Guttag does not even teach the concept of a node in a graphical program. Thus, Guttag certainly does not teach the concept of criteria information which indicates that a numerical function is to be performed on a subset, but not all, of the data values received by a node.

Applicant also respectfully disagrees with the Examiner's assertion that Roach teaches the node maintaining state information regarding received data values and using the state information to determine

2

the data collection on which to perform the numerical function. The Examiner refers to the data structure for the SIB function that performs an addition of two parameters. The "numerical ranges" to which the Examiner refers do not constitute state information used to determine a data collection on which to perform the addition function. Roach teaches that the addition function is performed on the two parameters, and the numerical ranges are simply used to validate that the values of the two parameters fall within a certain range of values (See Col. 5, lines 25-41 and FIG. 4).

Furthermore, claim 1 recites, "the node determining a first data collection on which to perform the first numerical function based on the criteria information and the state information." In other words, in claim 1, the first data collection is determined based on both the state information and the criteria information. As discussed above, the cited references do not teach configuring the node with criteria information which indicates that the numerical function is to be performed on a subset, but not all, of the data values received by the node. Thus, the cited references do not teach, "the node determining a first data collection on which to perform the first numerical function based on the criteria information and the state information." Applicant also notes that the rejection of claim 1 does not take into account the limitation that the criteria information is used in determining the first data collection.

Thus, for at least the reasons set forth above, Applicant respectfully submits that claim 1 is patentably distinct over the cited references. Inasmuch as independent claim 9 recites similar limitations as those discussed above with respect to claim 1, Applicant respectfully submits that claim 9 is also patentably distinct over the cited references.

Since claims 1 and 9 have been shown to be patentably distinct, Applicant submits that the claims respectively dependent thereon are also patentably distinct over the cited references for at least this reason. Applicant also submits that numerous of the dependent claims recite further distinctions not taught or suggested by the references, taken either singly or in combination. However, since the independent claims have been shown to be patentably distinct, a further discussion of the dependent claims is not necessary at this time.
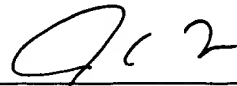
In light of the foregoing amendments and remarks, Applicant submits the application is now in condition for allowance, and an early notice to that effect is requested. If any extensions of time (under 37 C.F.R. § 1.136) are necessary to prevent the above referenced application(s) from becoming abandoned, Applicant(s) hereby petition for such extensions. If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert & Goetzel PC Deposit Account No. 50-1505/5150-48900/JCH.

Also enclosed herewith are the following items:

☒ Return Receipt Postcard

☒ Notice of Appeal

Respectfully submitted,

Jeffrey C. Hood

Jeffrey C. Hood
Reg. No. 35,198
Attorney for Applicants

Date: _3/30/2006_   JCH/JLB

4